National Labor Relations Board



Weekly Summary of NLRB Cases

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Cadillac Asphalt Paving Co. and its alter ego or successor Cadillac Asphalt, L.L.C.(7-CA-46464; 349 NLRB No. 5) Novi, MI Jan. 16, 2007. The Board affirmed the administrative law judge's conclusion that Respondent Cadillac Asphalt, L.L.C. (LLC) was a "perfectly clear" Burns successor to Respondent Cadillac Paving Co. (Paving), but it disagreed with the judge's findings that LLC and Paving were a single employer and that LLC was an alter ego of Paving. NLRB v. Burns International Security Services, 406 U.S. 272 (1972). [HTML] [PDF]

The Board noted that a single-employer analysis is appropriate only where, unlike here, two ongoing businesses are coordinated by a common master. In reversing the judge's alter ego finding, the Board acknowledged the substantially identical supervision and operations of the Teamsters unit under Paving and LLC and the substantially identical business purposes, equipment, premises, and customers of Paving and LLC. It explained however that this evidence did not outweigh the evidence showing separate ownership and control, the lack of identical management, and the lack of evidence to suggest that LLC was formed for other than legitimate business reasons. The Board therefore dismissed the allegations of unlawful conduct by Paving.

The judge found, with Board approval, that LLC violated Section 8(a)(5) and (1) of the Act by: (1) failing to continue in effect all the terms and conditions of employment of its predecessor, as set forth in the expired 1998-2003 Michigan Road Builders Association (MRBA) labor agreement by discontinuing health and welfare and pension contributions on behalf of unit employees; (2) bypassing Teamsters Local 247 and dealing directly with unit employees by offering to provide alternative health insurance coverage; and (3) failing and refusing to recognize and bargain with Local 247 as the representative of unit employees. LLC violated Section 8(a)(2) and (1) by threatening Teamsters-represented drivers with layoffs unless they transferred their union membership to either the Laborers or Operating Engineers, rendering assistance and support to the Laborers and Operating Engineers, and telling unit employee Patrick Raymo that he must transfer his union membership from the Teamsters to keep his job.

Members Schaumber and Kirsanow adopted the judge's finding that the General Counsel failed to establish that Respondent Paving was bound by the successor 2003-2008 MRBA labor agreement. The General Counsel relied on a 1986 power of attorney purportedly binding Paving indefinitely to contracts negotiated by the MRBA. Members Schaumber and Kirsanow decided that the General Counsel failed to authenticate the power of attorney. Member Walsh, dissenting on this issue, would find that the Respondents waived any objection to the power of attorney's authenticity, that the power of attorney bound Paving to the 2003-2008 agreement, and that LLC, as Paving's perfectly clear successor, violated Section 8(a)(5) by failing to continue in effect the terms and conditions of employment of the 2003-2008 MRBA agreement that existed when it took over Paving's operations. Members Schaumber and Kirsanow disagreed that the Respondents waived any authenticity objection by not timely asserting it.

(Members Schaumber, Kirsanow, and Walsh participated.)

Charge filed by Teamsters Local 247; complaint alleged violation of Section 8(a)(1), (2), and (5). Hearing at Detroit, June 28-29, 2004. Adm. Law Judge Lawrence W. Cullen issued his decision Dec. 16, 2004.

P.S.K. Supermarkets, Inc. (29-CA-26862, et al.; 349 NLRB No. 6) Brooklyn, NY Jan. 19, 2007. The Board found, contrary to the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by posting an overly broad rule that interfered with employees' right to wear union buttons, directing employees to wear union buttons inside their uniforms only, creating the impression of unlawful surveillance, and directing employees not to be seen speaking with union agents. [HTML] [PDF]

There were no exceptions to the judge's findings that the Respondent violated Section 8(a)(1) when: (1) Vice President Noah Katz coercively interrogated employee Luis Rodriguez in Nov. 2004; (2) Manager Tony Rosado coercively interrogated Rodriguez in March 2005; (3) Katz solicited employees' grievances in April 2005; (4) Managers Rosado and Sheryce Hodges asked employees to inform union organizers that they did not want representation; (5) Manager Hodges initiated two antiunion petitions and solicited employees to sign them; (6) Manager Kathy Mahoney snatched a union handbook and cards from Rodriguez; (7) Katz coercively interrogated a group of employees; and (8) Katz promised benefits to employees. No exceptions were filed to the judge's dismissal of the allegation that the Respondent violated Section 8(a)(1) by directing nonemployee union organizers to stop soliciting in the "shopping cart corral area."

The Board found it unnecessary to pass on the General Counsel's exceptions to, among others, the judge's failure to find that Manager Mahoney unlawfully interrogated employee Rodriquez on another occasion in March or April 2005 and to the judge's failure to find that Manager Mahoney participated in the unlawful conduct when Manager Hodges initiated two antiunion petitions and solicited employees to sign them.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Food and Commercial Workers Local 342; complaint alleged violation of Section 8(a)(1). Hearing at Brooklyn, Jan. 17-18, 2006. Adm. Law Judge Howard Edelman issued his decision Aug. 23, 2006.

Raley's Supermarkets and Drug Centers (32-CA-20049-1; 349 NLRB No. 7) Monterey, CA Jan. 19, 2007. Chairman Battista and Member Schaumber dismissed the complaint, agreeing with the administrative law judge that the Respondent did not unlawfully fail to respond to requests for information from Food & Commercial Workers Local 839 in violation of Section 8(a)(5) and (1) of the Act. Member Liebman dissented. [HTML] [PDF]

This case arose from two grievances filed by the Union alleging that two unit employees had been harassed, discriminated and retaliated against, and arbitrarily transferred from the Respondent's store in Monterey, CA. In a July 18, 2002 letter to Union Secretary-Treasurer Debbie Willis, the Respondent's senior human resources manager, Chris Clark, reported that the Respondent had completed its investigation of both grievances and that "[b]ased on our

investigation we feel that we have taken the appropriate action and therefore, the Company considers this matter closed." The Union's attorney requested that a board of adjustment be convened on the grievances and Willis made the first of two information requests. By letter dated July 29, 2002 to the Union's counsel, Matthew Ross, the Respondent's director of labor relations, David Cuesta, revealed general information about the Respondent's investigations and stated that "[n]ot one of the employees interviewed by Mr. Clark had made any allegations of being treated rudely, disrespectfully or unprofessionally in any way. . . . Otherwise, we believe the situation has been addressed and the matter closed." On Aug. 21, 2002, Ross wrote to Cuesta seeking additional information—the second of two information requests. Cuesta later told Willis that the grievances had been resolved and, accordingly, that the Respondent was not required to provide additional information.

Chairman Battista and Member Schaumber concluded that the Respondent provided the Union all of the relevant information in the Respondent's possession. They wrote:

Following the Union's first information request, the Respondent informed the Union that "[n]ot one of the employees" it had interviewed had complained of improper treatment. The Respondent therefore told the Union that "this matter [was] closed." Reading these statements together, it is apparent that the Respondent was saying that it had found no merit to the grievances. Moreover, it was clear not only from these statements, but also from the conspicuous absence of any remedial action by the Respondent affecting the grievants, that the Respondent found the grievances to lack merit.

Dissenting Member Liebman explained:

For a union to make an informed decision about taking a grievance to arbitration, it must know what action the employer has taken with respect to the grievance and why. If employers were not obligated to provide this essential information, unions would have no real option but to pursue every grievance—which would effectively shut down the grievance-arbitration process. The majority here invites that result by finding that the Respondent did *not* violate Section 8(a)(5) and (1) when it refused to inform the Union of the results of its investigation of the Union's grievances and the action it took with respect to those grievances.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Food & Commercial Workers Local 839; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Salinas on Aug. 5, 2003. Adm. Law Judge Jay R. Pollack issued his decision Oct. 27, 2003.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Treasure Island Foods, Inc. (Food & Commercial Workers Locals 881 and 1546) Chicago, IL Jan. 16, 2007. 13-CA-42746, 42958; JD-1-07, Judge Karl H. Buschmann.

Essex Valley Visiting Nurses Assn. and New Community Corp. and New Community Health Care, Inc. (Health Professionals and Allied Employees Local 5122) East Orange, NJ Jan. 19, 2007. 22-CA-24770; JD(NY)-03-07, Judge Mindy E. Landow.

Talmadge Park, Inc. (New England Healthcare Employees District 1199, SEIU) East Haven, CT Jan. 19, 2007. 34-CA-11295, 34-RC-2136; JD-04-07, Judge Richard A. Scully.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Auto Resources Group of Lap (Teamsters Local 89) (9-CA-43000; 349 NLRB No. 4) Louisville, KY Jan. 16, 2007. [HTML] [PDF]

NO ANSWER TO COMPLAINT AND COMPLIANCE SPECIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint and compliance specification.)

Bio Additives, LLC of Kentucky, a division of CMB Additives (Electrical Workers [IUE] - Communications Workers Local 744) (9-CA-42971; 349 NLRB No. 3) Louisville, KY Jan. 16, 2007. [HTML] [PDF]

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Innovative Facility Services, LLC (UFCW Local 3) (2-CA-37949; 349 NLRB No. 9) New York, NY Jan. 18, 2007. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Hospital Presbiteriano de la Comunidad, Inc., d/b/a Ashford Presbyterian Hospital, San Juan, PR, 24-RC-8540, Jan. 19, 2007 (Members Liebman, Schaumber, and Kirsanow)

Beckett Apothecary and Home Health Care, Inc., Sharon Hill, PA, 4-RC-21203, Jan. 19, 2007 (Members Liebman, Schaumber, and Kirsanow)

Chelsea Forest Products, Inc., Chelsea, NY, 3-RC-11715, Jan. 19, 2007 (Members Liebman, Schaumber, and Kirsanow)

Veolia ES Industrial Services, Inc., Detroit, MI, 7-RD-3537, Jan. 19, 2007 (Members Liebman, Schaumber, and Kirsanow)

DECISION AND DIRECTION OF SECOND ELECTION

Mount Clemens Regional Medical Center, Mount Clemens, MI, 7-RC-23031, Jan. 19, 2007 (Members Liebman, Schaumber, and Kirsanow)

DECISION AND ORDER [remanding proceeding to Regional Director]

Raebeck Construction Corp., Staten Island, NY, 29-RC-11029, Jan. 19, 2007 (Members Liebman, Schaumber, and Kirsanow)

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Albert Eaddy d/b/a Recana Solution, Dallas, TX, 16-RC-10754, Jan. 17, 2007 (Members Liebman, Schaumber, and Kirsanow)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Pacific Theaters Exhibition Corp. d/b/a Arclight Cinemas, Hollywood and Los Angeles, CA, 31-RC-8610, Jan. 17, 2007 (Members Liebman, Schaumber, and Kirsanow)

General Press Corp., Natrona Heights and Pittsburgh, PA, 6-RC-12559, Jan. 17, 2007 (Members Liebman, Schaumber, and Kirsanow)
